

United States Department of Agriculture

General Provisions

Non-Assistance Cooperative Agreement

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1. DEFINITIONS

The following terms shall have the meaning set forth below:

- a. **Authorized Departmental Officer (ADO)** - The Awarding Agency Official authorized to enter into, administer, and terminate Non-Assistance Cooperative Agreements.
- b. **Authorized Departmental Officer's Designated Representative (ADODR)** - The Awarding Agency's technical representative, acting within the scope of delegated authority, who is responsible for participating with the Cooperator in the accomplishment of this Agreement's objectives and monitoring and evaluating the Cooperator's performance.
- c. **Awarding Agency** - The USDA Agency making the award; Agricultural Research Service (ARS), Economic Research Service (ERS), or the National Agricultural Statistics Service (NASS), and for subawards, the Cooperator.
- d. **CFR** - Code of Federal Regulations

- e. **Cooperator** - The signatory(ies) to this Agreement receiving Federal funds.
- f. **EFT** - Electronic transfer of funds to the Cooperator's bank account.
- g. **FAR** - Federal Acquisition Regulations
HHS/PMS - Health and Human Services/Payment Management System - A method of receiving payment by electronic draw down.
- h. **i-Edison** (Interagency Edison) - The i-Edison database provides Federal grantee/cooperator organizations and participating federal agencies with the technology to electronically manage extramural invention portfolios in compliance with federal reporting requirements. I-Edison supports a "Common Face" for Invention Reporting to the Government. The system has been designed to facilitate grantee/cooperator institutions with the compliance of laws and regulations mandated by the Bayh-Dole Act whose purpose is to ensure transfer of technology from the research laboratory to the commercial/public sector.
- i. **International Cooperator** - The signatory(ies) to this Agreement receiving Federal funds incorporated and or headquartered outside the continental United States and its territories.
- j. **Non-Assistance Cooperative Agreement** - An Agreement, which is neither a Procurement Contract nor an Assistance-Type Cooperative Agreement, that furthers agricultural research, extension, or teaching programs in which the objectives of the agreement serve a mutual interest of the parties and all parties contribute resources to the accomplishment of those objectives, hereinafter referred to as the Agreement.
- k. **OMB** - Office of Management and Budget
- l. **Principal Investigator (PI)** - The Cooperator's technical representative who is responsible for participating with the ADODR in accomplishing the objectives of this agreement.
- m. **Treasury Check** - A method of receiving payment by paper check from the U.S. Treasury.
- n. **U.S.C.** - United States Code

2. LEGAL AUTHORITY CERTIFICATION

The Cooperator hereby certifies that it possesses legal authority to enter into this Agreement.

3. LEVEL OF PERFORMANCE

The Cooperator will use its best efforts to provide performance under this Agreement within the Federal obligation amount shown on page 1 of this Agreement and will notify the ADODR when it is anticipated

that performance under this Agreement will exceed this amount. The Cooperator is not obligated to continue performance under this Agreement, or otherwise incur costs in excess of the Federal obligation amount, unless authorized by the ADO. Costs incurred in excess of the Federal obligation shall not be reimbursed without approval and written ratification by the Director, Extramural Agreements Division, ARS. Unallowable costs will not be approved in any case.

4. FUNDING AVAILABILITY

The Awarding Agency's participation shall be subject to passage, by the Congress of the United States, of an appropriation of funds for the fiscal year from which expenditures may be legally made.

5. ASSURANCES

(Not applicable to Agreements awarded to International Cooperators.)

The Cooperator hereby gives assurance that it will comply with the following:

- a. International Air Transportation Fair Competitive Practices Act of 1975, Section 5 (49 U.S.C. 1517). Costs for foreign travel and related transportation of property are allowable only to the extent that United States flag air carriers are used.

- b. Nondiscrimination Requirements:

- c. Rehabilitation Act of 1973, Section 504;

Sex Discrimination - Title IX of the Education Amendments of 1972, as amended; Age Discrimination Act of 1975; Civil Rights Act of 1964, Title VI (42 U.S.C. 2000d).

The Cooperator also agrees to display Form AD-475A, USDA Civil Rights Poster entitled "And Justice for All", in common areas of its facility where the federally assisted research is being conducted during the performance period of the project. (Not applicable to awards with International Cooperators).

- c. Protection of Human Subjects Requirements: The Cooperator will comply with the following provisions regarding the rights and welfare of human subjects:

(1)The Cooperator is responsible for safeguarding the rights and welfare of any human subjects involved in research, development, and related activities supported by this Agreement. The Cooperator may conduct research involving human subjects only as prescribed in the statement of work and as approved by the Cooperator's cognizant Institutional Review Board. Prior to conducting such research, the Cooperator shall obtain and document a legally sufficient informed consent from each human

subject involved. No such informed consent shall include any exculpatory language through which the subject is made to waive, or to appear to waive, any of his or her legal rights, including any release of the Cooperator or its agents from liability for negligence.

(2)The Cooperator agrees to comply with U.S. Department of Health and Human Services' regulations regarding human subjects, appearing in 45 CFR Part 46 (as amended).

(3)It will comply with USDA policy which is to assure that the risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought.

(4)Selection of subject or groups of subjects shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied.

- d. Animal Welfare Act Requirements: The Cooperator agrees that it will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131, et seq., and the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR, Subchapter A) pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal funds. The Cooperator may request registration of facilities and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the Region in which their facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this requirement, may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737.

- e. Recombinant DNA Research Requirements: The Cooperator will assume primary responsibility for implementing proper conduct on recombinant DNA research and it will comply with the National Institute of Health Guidelines for Recombinant DNA Research, as revised.

If the Cooperator wishes to send or receive registered recombinant DNA material which is subject to quarantine laws, permits to transfer this material into the U.S. or across state lines may be obtained by contacting USDA/APHIS/PPQ, Scientific Services-Biotechnology Permits, 4700 River Road, Unit 133, Riverdale, Maryland 20737. In the event that the Cooperator has not established the necessary biosafety committee, a request for guidance or assistance may be made to the USDA Recombinant DNA Research Officer.

- f. That it will assist the Awarding Agency in complying with the: National Historic Preservation Act of 1966, Section 106, as amended, (16 U.S.C. 470, Executive Order 11593); Archaeological and Historic Preservation Act of 1966 (16

- U.S.C.. 469a-1 et. seq.);
- g. The Cooperator will comply with Federal regulations regarding equal opportunity, nonsegregated facilities and affirmative action (41 CFR, Chapter 60);
 - h. USDA regulations at 7 CFR 3017 subparts A through E and 7 CFR 3018 regarding debarment and suspension, drug-free workplace, and anti-lobbying act requirements;
 - i. The Single Audit Act (Public Law 98-502), as implemented by OMB Circular A-133;
 - j. International Air Transportation Fair Competitive Practices Act of 1975, Section 5 (49 U.S.C.. 1517);
 - k. Environmental Requirements:
National Environmental Policy Act of 1969 as amended (42 U.S.C.. 4321 et. seq.), and 7 CFR Part 1b;
Clean Air Act (42 U.S.C.. 7401 et. seq.);
Water Pollution Control Act (33 U.S.C. 1251 et. seq.);
Flood Disaster Protection Act of 1973, Public Law 93-234 (42 U.S.C.. 4001 et. seq.)

6. ALLOWABLE COSTS

Payment up to the amount specified in this Agreement shall be made only for allowable, allocable, reasonable, and necessary costs in accordance with the following cost principles in effect on the date of the award:

- (a) For institutions of higher education - OMB Circular No. A-21;
- (b) For State, local or federally-recognized Indian tribal governments - OMB Circular No. A-87;
- (c) For nonprofit organizations - OMB Circular No. A-122;
- (d) For hospitals - Appendix E of 45 CFR Part 74; or
- (e) For commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 - FAR at 48 CFR Part 31.

7. ADODR RESPONSIBILITIES

The ADO has delegated ADODR responsibilities to the individual named on page 1 of this Agreement, subject to the limitations as provided for in the ADODR Designation and Instructions, (attached and made apart hereto.)

8. PRIOR APPROVALS

Written approval of the ADO is required for the following:

- a. To change the PI or to continue the research, education, or information work, without the participation of the PI, for a period in excess of three continuous months.

- d. A substantial reduction of the effort devoted to the work by the PI.
- c. Changes to the objectives of this Agreement, or the phenomenon or phenomena under study.
- d. Federal funding increases.
- e. Period of performance extension.
- f. Transfer of amounts within budgeted cost categories.
- g. Reimbursement of pre-award costs.
- h. Reimbursement of travel costs.
- i. Purchase of equipment.
- j. Operation of government owned vehicles by Cooperator employees.
- k. The subaward, transfer or contracting out of any work under this Agreement. This provision does not apply to the purchase of articles, supplies, equipment, and services which are both necessary for and merely incidental to the work required under the Agreement.

Generally, no requests for changes to the scope of this Cooperative Agreement will be approved.

Unilateral amendments to this Agreement may be issued by the ADO for changes which are purely administrative in nature.

9. PROJECT CONTINUANCE

Prior to completion of the work effort, the parties will review the results and determine the benefits of continuing the project. In the event the project is continued, this Agreement will be amended to provide for the additional work efforts, obligations of the parties, and performance period.

10. FINANCIAL/PERFORMANCE REPORTING

The Cooperator is responsible for monitoring and reporting performance to the ADO through the ADODR, as follows: (See Form ARS-451, Page 1 of this Agreement, for the applicable reporting frequency).

Pursuant to the Metric Conversion Act of 1975 (Public Law 94-168), whenever feasible, the Cooperator shall use the metric system in expressing units of measurement in interim and final performance reports.

All reports must be written in the English language.

a. Interim Performance Reports.

Reports are to include:

(1) A summary of progress, including a comparison of actual accomplishments with goal(s) established for the time period being covered and the reasons for slippage if the objectives are not met;

(2) An outline of any problems encountered or the occurrence of unusual or favorable developments during the period; and

(3) A brief summary of work to be accomplished during the ensuing reporting period.

b. **Final Performance Report.**

Unless otherwise specified in this Agreement, the final performance report shall be due 90 calendar days following the expiration, completion, or termination date of this Agreement. This report is to include appropriate identifying data and the following information:

(1) A description of all work results, conclusions, and, if any, recommendations;

(2) Titles of thesis or dissertations resulting, if any;

(3) Names of scientific or other collaborators connected with the project, including students (show title or status, e.g., associate professor, graduate student);

(4) Other deliverables as given in this Agreement;

(5) Copies of copyrighted or copyrightable materials including computer software;

(6) A description of inventions resulting from the work and a statement of status concerning any protections sought;

(7) A copy of any publications resulting from this Agreement; and,

(8) Signature of PI and date.

c. **Significant Developments.**

Events may occur between scheduled performance reporting dates which significantly impact the overall effort. Therefore, the Cooperator shall promptly notify the ADODR when the following conditions or situations surface.

(1) Unanticipated delays or adverse conditions which threaten to materially impair its ability to meet the prime objective(s) of this Agreement. This disclosure is to include a statement of any action taken or contemplated and any assistance needed to resolve the problem(s); or

(2) Favorable developments which are expected to enable it to meet established schedules or goals sooner or at less cost than anticipated or may produce more beneficial results than originally planned.

d. **Financial Reports.**

(1) Financial Status Reports

The Cooperator agrees to submit financial status reports to the ADO through the ADODR on Standard Form (SF) 269A (short form), Financial Status Report, and a final report within 90 days of project completion.

(2) Itemized Expense Report

(Applicable if payment is by HHS/PMS payment method):

The Cooperator will furnish a detailed addendum attached to the SF 269A (short form) or SF 269 (long form) containing the following minimum information or using the Cooperator's format:

- Name of Institution
- Agreement Number
- Reporting Period
- Current Quarterly Drawdown
- Current Quarterly Expenses

- Details of Current Quarter's Expenses: Salary and Non-Salary

- e. Where program income is anticipated, SF - 269 (long form) shall be used. Program income earned during the project period shall be added to funds committed to the project by the Federal Awarding Agency and the Cooperator and used to further eligible project or program objectives unless otherwise specified by the ADO.

11. TECHNICAL SUPERVISION

The Awarding Agency may technically supervise work of a Cooperator's employees performed at the Awarding Agency's facilities. The Awarding Agency may not, however intervene in the employer-employee relationship between a Cooperator and its employees. In addition, the Awarding Agency may not act so as to hire or otherwise engage in the personnel management of a Cooperator's employees.

12. RULES OF THE WORKPLACE

Cooperator employees, while engaged in work at the Awarding Agency's facilities, will abide by the Awarding Agency's standard operating procedures regarding the maintenance of laboratory notebooks, dissemination of information, equipment operation standards, hours of work, conduct and other incidental matters stated in the rules and regulations of the Awarding Agency.

13. PATENTS, INVENTIONS AND COPYRIGHTS

a. Patents and Inventions.

The clause found at 37 CFR Part 401.14 is incorporated into this Agreement by reference and is applicable to all organizations regardless of size.

Terms are defined as follows:

(1) Contractor means the Cooperator Organization as identified on the Form ARS-451, a part hereof.

(2) Contract means this Agreement.

b. Communications.

(1) The central point of contact within the U.S. Department of Agriculture for communications relating to the administration of patents and copyrights is:

Deputy Asst. General Counsel for Patents

Research and Operations Division

Office of General Counsel

U.S. Department of Agriculture

Stop 1415

14th & Independence Ave., S.W

Washington, DC 20250-1415

(2) Invention Disclosure and Utilization Reporting - The Cooperator shall report Invention Disclosures and Utilization information electronically via iEdison Web Interface at: <http://www.iedison.gov/>.

(2) Invention Disclosure and Utilization Reporting via U.S. Mail - If access to Interagency Edison is unavailable, the invention disclosure should be sent directly to:

DEITR, National Institutes of Health

6701 Rockledge Drive, Room 3175, MSC 7750

Bethesda, Maryland 20892-7750

c. Copyrights.

The Awarding Agency reserves a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for Federal Government purposes. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. The Cooperator shall ensure that no Agreement is entered into for transferring the rights which would conflict with the nonexclusive license of the Awarding Agency.

The Cooperator awarding a subaward is allowed to impose subaward terms reserving a nonexclusive license for itself, similar to the one reserved by the Awarding Agency, with respect to any copyright or rights subject to this section that arise under the subaward.

14. PROJECT DATA

Data which were collected, compiled, and evaluated under this Agreement shall be shared and mutually interchanged by the

Cooperator and the Awarding

Agency, with the final results of this project made available to both parties.

15. PAYMENTS

Payment will be made by either the HHS/PMS method, the Invoice/Treasury Check method or EFT. (See Form ARS-451, Page 1 of this Agreement, for the applicable method.)

All payment requests are to be submitted in the English language.

- a. Applicable if payment is by Invoice/Treasury Check method or EFT:

(1) Payments by the Awarding Agency to the Cooperator will be made by the Invoice/Treasury Check method or EFT for expenditures for each previous period as reflected on properly executed invoices or vouchers to be prepared by the Cooperator and submitted to the ADO through the ADODR. A properly executed invoice shall include, at a minimum, the following information:

- Awarding Agency agreement number;
- Organization's name, payment address, and Employee Identification Number/Tax Identification Number;
- Itemized listing of costs to be reimbursed;
- Specific time period covered by the invoice; and,
- Signature of Authorized Organizational Representative.

(2) Checks covering payments under this Agreement will be drawn in the name of the Cooperator unless a written request from the Cooperator accompanies the billing, requesting, for purposes of check identification, that such checks also include the name of a particular department of the Cooperator's organization. If further check identification is needed, the Cooperator may:

- number the invoice and request that it be shown on the check;
- submit the invoice in duplicate and request that one copy of the invoice be returned with the check; or,
- request that the Cooperative Agreement number cited on the invoice be shown on the check.

- b. Applicable if payment will be made through the HHS/PMS payment method:

HHS/PMS is administered by the Federal Assistance Financing Branch (FAFB), Office of the Deputy Assistant Secretary, Finance which will forward instructions for obtaining payment. Inquiries regarding payments should be directed to:

Chief, Financial Assistance Financing Branch

PO Box 602

Rockville, Maryland 20852

(301) 443-1660

- c. Payment by the Awarding Agency to the Cooperator is contingent upon receipt of reports in accordance with the terms and conditions of the Agreement. Payment may be withheld until reports are provided.
- d. Indirect costs shall be paid only upon receipt of an approved negotiated indirect cost rate schedule, where authorized by enabling legislation. No indirect costs shall be advanced or reimbursed unless supported by an approved indirect cost rate schedule.

16. TUITION REMISSION

Reimbursement to the Cooperator for tuition remission is not allowable under this Agreement.

17. INDIRECT COSTS

Reimbursement to State Cooperative Institutions for indirect costs is unallowable under this Agreement.

18. DEBT COLLECTION

- a. Any monies that are payable or may become payable from the United States under this Agreement to any person or legal entity not an agency or subdivision or a State or local government may be subject to administrative offset for the collection of delinquent debt to the person or legal entity owner to the United States under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716-3719); 4 CFR Part 102 and 7 CFR Part 3.
- b. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed the United States will be disclosed to consumer or commercial crediting reporting agencies.

19. ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

The following acknowledgment of Awarding Agency support must appear in the publications of any materials which is based upon or developed under this Agreement (whether or not copyrighted):

"This material is based upon work supported by the U.S. Department of Agriculture, under Agreement No. (Cooperator should enter the applicable agreement number here)."

All such materials, must also contain the following disclaimer unless the publication is formally cleared by USDA:

"Any opinions, findings, conclusion, or recommendations expressed in this publication are those of the author(s) and do not

necessarily reflect the view of the U.S. Department of Agriculture."

a. **Public Information.**

Any public information concerning work carried out under this Agreement will describe the contributions of both parties to the work effort. In the event of a dispute, a separate publication may be made with effective statements of acknowledgment and disclaimer.

b. **Technical Publication.**

Any technical publication developed as a result of this Agreement shall be submitted by the developing party to the other for advice and comment. In event of dispute, a separate publication may be made, with effective statements of acknowledgment and disclaimer.

20. CAPITAL IMPROVEMENTS AND TRAVEL

No part of the funds made available by the Awarding Agency to the Cooperator shall be expended for capital improvements or travel of the Awarding Agency's employees.

21. ADVERTISING

In advertising, the Cooperator will not refer in any manner to the Federal Government or agencies thereof in connection with the use of the results of this research without prior specific written authorization by the ADO. Unless otherwise provided herein, information obtained as a result of this project will be made available to the public in printed or other forms by the Awarding Agency at its discretion. The Cooperator will be given due credit for its cooperation in the project.

22. TITLE TO EQUIPMENT

As authorized by 7 U.S.C. 3318d, title to expendable and nonexpendable equipment, supplies, and other tangible personal property purchased under this Agreement shall vest in the Cooperator from date of acquisition unless otherwise stated in this Agreement.

23. EQUIPMENT MANAGEMENT REQUIREMENTS

The Cooperator's procedures for managing equipment purchased with Awarding Agency funds are to meet the following requirements:

- a. Maintain accurate and up-to-date property records;
- b. Property is to be properly maintained in good working order; and,
- c. Property is to be insured.
- d. Either party may furnish equipment and/or facilities, at no cost to the other, as may be mutually agreed to between

the Cooperator and the ADODR for successful completion of this project.

24. MOTOR VEHICLE ACCIDENT LIABILITY

(Not applicable to Agreements awarded to International Cooperators.)

The Awarding Agency will assume responsibility for vehicle repair if the Awarding Agency determines that the Cooperator's employee was authorized to use the vehicle, the vehicle was used within the scope of the authorization, and the Cooperator's employee was not negligent in causing damage. The Cooperator shall be responsible for damage if the Awarding Agency finds that Cooperator was not authorized to drive the vehicle, was negligent, or drove the vehicle outside the scope of authorization.

25. LIABILITY - OTHER

The Cooperator agrees to indemnify and hold harmless, the Awarding Agency, its employees, or contractors from and against all liability, claims, and demands on account of personal injury, property loss, or damage of any kind whatsoever, which arise out of, or are in any manner connected with, or are claimed to arise out of or be in any manner connected with, the performance of this Cooperative Agreement by the Cooperator's employees or agents.

The Cooperator shall provide and maintain the necessary types of insurances, as may be needed under this Cooperative Agreement, including but not limited to workers' compensation, employer's liability, and comprehensive general liability in amounts sufficient to protect the Federal Government's interest in not being subject to unwarranted damage claims resulting from the Cooperator's use of the Awarding Agency's facilities.

It is further understood that the Awarding Agency shall not be held responsible for any breakage, theft, or acts of vandalism to the Cooperator's equipment and supplies during the period of the Cooperative Agreement.

26. TERMINATION BY MUTUAL AGREEMENT

This Agreement may be terminated by either of the parties upon 90 calendar days' notice in writing of one party to the other party.

27. SUSPENSION OR TERMINATION FOR CAUSE

The Awarding Agency reserves the right to suspend payment if the Cooperator fails to comply with any terms and conditions of the Agreement, if there is evidence of the misuse of funds by the Cooperator, if the parties fail to reach a solution acceptable to both parties regarding any disagreement concerning the Agreement, or if any other event substantially affects the material terms of this Agreement.

28. QUESTIONNAIRES AND SURVEY PLANS

The Cooperator is required to submit to the Awarding Agency copies of questionnaires and other forms for clearance in accordance with the Paperwork Reduction Act of 1980 and 5 CFR 1320.

29. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS

(This requirement is not applicable to International Cooperators.)

- a. Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal Awarding Agency. The only exceptions are:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

- b. The Federal Awarding Agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Cooperators that are pertinent to the Agreement, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Cooperator's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.
- c. This requirement shall be passed through to lower tier subcontractors or subawards exceeding \$10,000 in value.